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December 6, 2004

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 13, 2004

Case Number: TSO-0094

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. After the individual was arrested for Driving While Intoxicated (DWI) on January 12, 2003, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on January 28, 2003. *See* DOE Exhibit 8. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on July 16, 2003, following up with a telephone interview on July 23, 2003, and thereafter issued an evaluation to the DOE. *See* DOE Exhibit 21. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, the DOE consultant psychiatrist, the chief psychologist at the DOE facility, a counselor whom the individual saw through the Employee Assistance Program (EAP), the individual's wife, two of his co-workers, his supervisor, his mother, and his Alcoholics Anonymous sponsor. Both the DOE Counsel and the individual's attorney submitted exhibits prior to the hearing. I closed the record upon receiving the transcript of the hearing on July 20, 2004.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. And I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been sufficiently resolved.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse." *See* 10 C.F.R. § 710.8(j). The Notification Letter also asserted that the individual has "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability of" the individual. *See* 10 C.F.R. § 710.8(h). These statements were based on the individual's January 2003 DWI and a July 2001 arrest for Public Intoxication, as well as the July 28, 2003 diagnosis by the DOE consultant psychiatrist that the individual suffered from "Alcohol Abuse, in early full remission (recurrent episode)." DOE Exhibit 21.

The DOE's concern in this case is limited to the individual's use of alcohol. The individual has not disputed that he has had a problem with alcohol, but instead used the opportunity of a hearing to demonstrate how he has dealt with that problem, and why the concerns of the DOE have been mitigated. Specifically, in requesting a hearing, the individual contended that "medical evidence and testimony will show that such concerns [stemming from his alcohol-related arrests] have been mitigated through his subsequent actions." Letter from Individual's Attorney to DOE Local Office (March 19, 2004) at 2. While acknowledging the diagnosis of the DOE psychiatrist that the

individual suffered from alcohol abuse in early full remission, the individual argued that “medical evidence and testimony will show that he is presently in sustained full remission.” *Id.* at 1; *see* Transcript of Personnel Security Hearing (“Tr.”) at 118. Thus, the remainder of this decision will focus on whether the security concerns at issue have been resolved.

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether restoring access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

“In resolving a question concerning an individual's eligibility for access authorization,” I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). The factors set forth in the regulations that are most pertinent to this case are the absence or presence of the rehabilitation and reformation, and the likelihood of continuation or recurrence of alcohol-related problems in the future.

In the present case, the record shows that the individual has made tremendous progress in his rehabilitation efforts. By all accounts, he has done everything that has been expected of him, and more. Moreover, the network of support available to the individual is impressive. These facts make all the more credible the agreement among the experts who testified that the individual’s risk of relapse is low. As such, I find that the security concerns at issue have been sufficiently resolved.

1. The Initial Response to the Individual’s DWI

First, the individual promptly reported his January 12, 2003 DWI arrest to the DOE, thus triggering a rapid response at the local DOE office. This response was due in part to the fact that the individual was included in the DOE’s Personnel Assurance Program (PAP), “a human reliability program designed to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental, or physical incapacities that could result in a threat to nuclear explosive safety.” 10 C.F.R. § 711.1. On January 14, 2003, two days after the individual’s arrest, a Potentially

Disqualifying Information (PDI) meeting was held to evaluate the individual's case. At the meeting were the PAP coordinator, the Site Occupational Medical Director, the site's chief psychologist, the individual, and the union steward, among others. Before this meeting took place, the individual had his blood tested for problems with liver function, and also was evaluated using the Substance Abuse Subtle Screening Inventory (SASSI). The record of this meeting indicated that the results of the SASSI were inconclusive, as were the results of the blood tests as to liver function. Nonetheless, the group recommended "mandatory referral" to the site's Employee Assistance Program (EAP), random blood alcohol tests "six times over the next nine months" and "complete abstinence from all forms of alcohol." Individual's Exhibit A.

A second PDI meeting was held on April 15, 2003. During the intervening period, according to the testimony of the site's chief psychologist, the individual "had completed the recommendations that we asked on" January 14, 2003. Tr. at 64. Specifically, the record of the meeting indicates that had completed an "intensive outpatient program" through a local university hospital, had begun attending Alcoholics Anonymous, and was in the process of completing "his 90 meetings in 90 days." Individual's Exhibit A. A third PDI meeting, on May 20, 2003, found that the individual had "demonstrated good progress" and that his "liver function tests have returned to normal." *Id.* The recommendation of the group was that the individual "continue with counseling and AA" and complete the battery of random blood alcohol tests, the results of which to date were negative. *Id.*; Tr. at 69. The group also recommended that the individual be reinstated in the Personnel Assurance Program. Tr. at 68.

The counselor at the DOE site to whom the individual was first referred, and who recommended that the individual undertake the intensive outpatient treatment program, testified that the individual "was very willing to do whatever it took to get into treatment to look at the problem and address that issue of his alcohol abuse." Tr. at 76. The outpatient program lasted for five weeks, and was comprised of three to four-hour sessions conducted four to five days per week. Tr. at 76-77, 142. The DOE site counselor received weekly reports from the counselor in charge of the program, and "they were very positive, that he either met or exceeded expectations as far as the program was concerned and was working the steps accordingly and completed the program." Tr. at 77.

2. The Evaluation of the DOE Consultant Psychiatrist

The DOE consultant psychiatrist interviewed the individual on July 16, 2003, following up with a telephone interview on July 23, 2003. The psychiatrist testified that at the time of their interviews, the individual was continuing to attend AA, and that there were "changes in his life situation that . . . are supportive of sobriety." Specifically, she noted that the individual had continued seeing a counselor at the DOE site and that his wife, who uses little or no alcohol, was "very supportive of his treatment." Tr. at 19-20.

As noted above, in her July 28, 2003 report the DOE psychiatrist diagnosed the individual with "Alcohol Abuse, in early full remission (recurrent episode)." DOE Exhibit 21 at 17. The "recurrent episode" portion of the diagnosis refers to the psychiatrist's finding that the individual "suffered

from alcohol and Polysubstance abuse from age 16 to 17, was a user of alcohol habitually to excess when he was in the military from age 18 to 23 . . . and had recurrence of alcohol abuse over the last three years.”
Id.

The DOE psychiatrist concluded that the one of the following would demonstrate adequate evidence of rehabilitation:

1. Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one year following the completion of this program. This would equal two years of sobriety.
2. Satisfactorily complete a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including what is called “aftercare” and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1½ years following the completion of this program. This would equal 2 years of sobriety.

Id. at 18-19.

The DOE psychiatrist provided two alternatives to demonstrate adequate evidence of reformation:

1. If the individual goes through one of the two rehabilitation programs listed above, 2 years of absolute sobriety would be necessary to show adequate evidence of reformation.
2. If the individual does not go through one of the two rehabilitation programs listed above, 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

Id. at 19.

At the hearing, the psychiatrist testified,

[A]t the time of my evaluation, [the individual] had successfully completed the recommended rehabilitation treatment except for the aftercare.

He seemed to be in compliance, but has not successfully completed the duration of the aftercare treatment recommendations. He also . . . only had about six months of sobriety to date when I saw him, and in my opinion, that was not sufficient evidence of reformation.

Tr. at 30.

The DOE psychiatrist was the first witness to testify at the hearing, and was asked by the individual's attorney, "assuming that the evidence today will be that he had completed the program and maintained his counseling and his attendance at Alcoholics Anonymous with a sponsor, . . . would that allow you to mitigate this standard of two years of sobriety to a shorter period of time?" The psychiatrist responded that she was "open to hearing what has happened," Tr. at 43, and remained present during the remainder of the hearing.

3. The Individual's Progress from July 2003 to the time of the June 2004 Hearing

The DOE site counselor who recommended the intensive outpatient treatment program testified that the individual continued to see him, first "on about an every-other-week basis, and since that point, a monthly basis, to do follow-up work with him." Tr. at 77. He noted that the individual also had continued to attend AA, had "gotten a sponsor and continued to work on the steps," and had followed all the recommendations the counselor had made. Tr. at 78, 86. The counselor testified that the individual "has completely restructured his life in terms of participation in the community, by his report, by being involved in Little League and coaching and those kinds of things, as well as church." Tr. at 79.

As for where the individual stood at the time of the June 2004 hearing with respect to the diagnosis of Alcohol Abuse, which was found to be in early full remission in July 2003, the counselor testified, "I think now it's more in terms of sustained full remission with regards to his continuous abstinence, continuous attendance at AA, continuing in counseling, he's had a sponsor and he's working the steps." Tr. at 84. Finally, the counselor opined that there was a "low probability" that the individual would experience a relapse. Tr. at 85.

The individual's wife testified that the individual has changed "dramatically" since he began treatment. Tr. at 95.

We spend a lot more time together. We work out at the gym probably about three or four times a week. He coaches his little girl's baseball team, and we have games that we go to, and he participates in the church. It's changed because he used to never do any of that stuff before.

Tr. at 96. She further testified that she rarely drinks, and that they keep no alcohol in their house. Tr. at 95, 99. The individual's mother, who lives in the same town as her son and sees him "about every day," testified that, since the individual quit drinking, he has been more communicative with her, talks with her about his problems, and spends more time with his daughter. Tr. at 121, 125-26.

A co-worker of the individual testified that the individual takes his recovery "very seriously." Tr. at 105. A former supervisor of the individual at the DOE site, who has been in contact with the individual about once a month and has seen the individual socially, confirmed that the individual is

very dedicated to his recovery. Tr. at 115. The individual's AA sponsor, who sees the individual about twice a week, concurred in this view, remarking that the individual has "made tremendous strides." Tr. at 133, 136.

Finally, the individual testified on his own behalf. He stated that he intends to continue seeing his counselor and attending AA meetings. The individual testified that he has abstained from using alcohol since entering treatment, and intends to remain abstinent for life. The individual's testimony as to his abstinence was corroborated by the testimony of the other witnesses at the hearing, by the results of the six random blood alcohol tests, discussed above, none of which produced a positive result, as well as by the fact that the individual's liver functions had returned to normal by May 2003. Tr. at 69; Individual's Exhibit A.

After hearing the other witnesses testifying following her at the hearing, the DOE psychiatrist was asked whether she had "heard any new information today that would change your opinion with regard to your reformation and rehabilitation?" Tr. at 154. In responding, she stated, "I think he has the internal motivation now, and I feel very comfortable to mitigate, you know, the length of time that I initially recommended. . . . [t]hat one-and-a-half years, together with all of the mitigating factors that he had shown, is, I think, sufficient to equal the two years that I would have liked for him to have." Tr. at 155. She further stated that she thought the individual's risk of relapse "has decreased to a low probability." Tr. at 156.

III. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for a security clearance. However, the concern raised by that evidence has been significantly mitigated by the individual's very commendable efforts at recovery from his alcohol problem, such that both experts who opined on the issue felt that his risk of relapse is low. Having reviewed all of this evidence, I conclude that the chance of such a relapse is low enough that what risk it does present is acceptable. For the above-stated reasons, "after consideration of all the relevant information, favorable and unfavorable," I conclude that restoring the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: December 6, 2004